

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 306/2022.

1.Devidasrao s/o Khajinrao Jadhav,
Age 65 years, Occupation – Secretary,

2.Ujjwql s/o Devidasrao Jadhav,
Age 31 years, Occupation – Vice President,

Resident of Asegaon Purna, Tq.Chandur
Bazar, District Amravati.

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APPLICANTS.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Police Station Asegaon Purna,
Tq. Chandur Bazar, District Amravati.

2.Ku. Sarla Hiranmanji Patil,
resident of Asegaon Purna,
Tq. Chandur Bazar, District Amravati.

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NON-APPLICANTS.

Mr. D.S. Khushalani, Advocate for Applicants.
Mr. M. Khan, A.P.P. for Non-applicant No.1.
Non-applicant No.2 - Served.

CORAM : VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATE : FEBRUARY 24, 2023.

ORAL JUDGMENT (PER , VINAY JOSHI, J.) :

Considering the nature of controversy involved in the matter, and by consent of the learned Counsel appearing for the parties, Criminal Application is taken up for final disposal at the stage of admission.

Admit.

2. This is an application seeking to quash the first information report bearing Crime No.225/2021 registered with Asegaon Police Station, District Amravati for the offence punishable under Sections 323, 504 read with Section 34 of the Indian Penal Code and Sections 3[1][r], 3[1][s], 3[2][va] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “**the Atrocities Act**” for short).

3. Initially the report has been lodged by non-applicant no.2 lady regarding the incident dated 12.10.2021 occurred at 11 a.m. in the concerned school. The informant was serving as staff nurse in the school run by Annabhau Sathe Educational Society. Applicant no.1 Devidasrao was the secretary, whilst applicant no.2 Ujjwal was President of the said society at the relevant time. The informant was employed as staff nurse by the society in the year 2004. It is informant's case that all the time applicants used to harass and humiliate her. On 12.10.2021 around 11 a.m. a meeting was held pertaining to departmental enquiry against the informant. In the said meeting, several persons were present including applicants. At the relevant time co-accused Sangita Deshmukh blamed informant about her unsatisfactory work and abused her in the name of caste. She has also assaulted the informant. Both applicants were present in the meeting, who have also abused the informant in the name of caste and threatened her for dire consequence, and therefore, the report.

4. It is the stand of applicants that they also belong to

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Scheduled Caste of which caste certificate [page no.65] has been produced, which is part of the charge sheet. The police while filing the final report have specified that there is material against the applicants pertaining to offence punishable under Sections 504 read with Section 34 of the Indian Penal Code only.

5. It is the case of applicants that the informant lady has not registered herself with Maharashtra Nursing Council for which she has been repeatedly called upon to make necessary compliance. In that regard notice was also issued to the informant on 27.08.2019. Informant has produced registration certificate, however, on verification it was found to be forged and fabricated one. Thereafter a charge sheet has been served on the informant on 27.08.2021. According to applicants, with malafide intention to pressurize the management, afterthought false report has been lodged on 13.10.2021.

6. On facts, the learned Counsel appearing for applicants took us through statement of various witnesses. Pertinent to note

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that the informant herself has stated in her statement that the incident was witnesses by Archana Wadwale, Sukhdeo Pundkar and Subhash Thakre. We have gone through the statement of all these three witnesses, wherein they have ascribed the role of hurling abuses and assault to the co-accused Sangita Deshmukh only. They have been specific in saying that though both applicants were present in the meeting, they maintained silence. In the last paragraph of statement, they reaffirmed that both applicants had neither abused, nor did anything at the relevant time. On the basis of these statement, it has been canvassed that the allegations against applicants are false and made with deceitful intent.

7. The learned A.P.P. would submit that the report lodged by the informant is quite specific, describing the role of applicants. Though three eye witnesses do not speak against applicants, however, they being the employee of applicants, have not supported the informant lady. Moreover, it is submitted that at this stage the Court cannot hold mini trial and marshal worth of the material which is the domain of trial. While emphasizing this point learned

A.P.P. has relied on the decision in case of **State of Uttar Pradesh and another .vrs. Akhil Sharda and others – 2022 LiveLaw [SC] 594.**

There can be no dispute about the said proposition of law, however, on the basis of giving facts of the case, the material has to be examined within the set parameters.

8. This Court is invested with inherent powers principally for two reasons i.e. to prevent the abuse of the process of Court and to secure the ends of justice. The powers are unbridled and on the basis of facts and circumstances of each case the matter has to be scanned. It is not expected from the Court to just read the first information report and mechanically arrive on conclusion. The totality of circumstances, its effect, surrounding circumstances are to be looked upon. If mechanical view is taken to just read the contents of first information report, dehors to other material, then it would cause miscarriage of justice. Certainly at this juncture the Court is required to prima facie see the truthfulness of the allegations, probabilities and malice, if any. We are well aware about our limitations, however, in order to prima facie verify worth of

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allegations, we have scanned the entire material.

9. The police report has to be appreciated on the basis of the background facts. The informant lady has allegedly produced a fabricated registration certificate, that is why she was facing departmental enquiry. Several documents have been produced which shows that she was repeatedly served with notice and finally charge sheet has been issued on 27.08.2021. On the face of such facts, the subsequent filing of the police report has to be appreciated. Rather pending enquiry gives us a ring of caution while considering the allegations leveled in the police report. The informant herself has stated the names of three persons who were present at the time of occurrence. As noted above, all of them do not support the informants case in their police statement, but, state that both applicants did nothing. Though the learned A.P.P. would submit that these witnesses are employees of the school, however, it is to be remembered that they have not disowned the allegations against the co-accused Sangita Deshmukh, another teacher working under the same management. Therefore, it emerges that the witnesses have

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stuck up to the statement of the informant as regards co-accused, but, did not say anything against applicants, which assumes significance.

10. Always it should be our endeavor to see whether prima facie case is made out, whether the criminal proceedings has been malafidely motivated, then it should be nipped into bud. Facing of criminal trial is a serious affair and unless there are substantial reasons, no one can be put to said rigor. The Supreme Court in a case of **State of Haryana and others .vrs. Ch. Bhajan Lal and others – AIR 1992 SC 604** has laid down parameters in paragraph no.108 on the basis of which powers under Section 482 are to be exercised. The case squarely falls under category no.7, which reads as under :

“7. Where a criminal proceeding is manifestly attended with mala fide and /or when the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. In view of above, we find that this is a fit case to exercise our inherent powers to prevent the abuse of the process of Court, hence, the following order.

ORDER

- [i] Criminal Application is allowed and disposed of.
- [ii] The first information report bearing Crime No.225/2021 registered with Asegaon Police Station, District Amravati for the offence punishable under Sections 323, 504 read with Section 34 of the Indian Penal Code and Sections 3[1][r], 3[1][s], 3[2][va] of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and related proceeding arising therefrom is hereby quashed and set aside as regard applicants only.

JUDGE

JUDGE